

GAO

United States General Accounting Office

Report to Congressional Committees

May 2000

WORLD TRADE ORGANIZATION

Status of China's Trade Commitments to the United States and Other Members



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Abbreviations

TRQ	Tariff-rate quota
WTO	World Trade Organization



United States General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

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May 16, 2000

The Honorable William V. Roth, Jr.
Chairman
The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Bill Archer
Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

In November 1999, the United States and China concluded a bilateral trade agreement on issues related to China's joining the World Trade Organization. As a result, the administration has asked Congress to pass legislation that would allow the President to grant China permanent normal trade relations status, which would eliminate a potential conflict between U.S. law and U.S. obligations if China becomes a member of the World Trade Organization.¹ However, China must complete further negotiations in the World Trade Organization before all the terms and conditions for its membership are known and are secure.

China's World Trade Organization membership negotiations take place on two tracks—bilateral and multilateral negotiations. The bilateral negotiations, including those between China and the United States, are designed to obtain China's commitment to remove specific market access barriers and open China's domestic market to more foreign goods and services. The focus of the multilateral negotiations—between China and a working party of 44 members, including the United States and other

¹Under the Trade Act of 1974, China has only been granted normal trade relations status annually through a presidential waiver. Once China becomes a member of the World Trade Organization, organization members would have to provide this status on an unconditional basis to China. See *World Trade Organization: China's Membership Status and Normal Trade Relations Issues* (GAO/NSIAD-00-94, Mar. 17, 2000) for more information on this and related issues.

interested countries—is to ensure that China will conform its trade regime to all the rules, practices, and obligations required by World Trade Organization agreements. The results of all these negotiations are finalized in an accession protocol and working party report that outline the terms of China's membership.

Because of your continued interest in these issues, we are providing an update on our past work on the status of China's membership negotiations, including portions of our past analysis that were recently declassified by the U.S. Trade Representative. We report on (1) the results of the November 1999 bilateral Agreement on Market Access between China and the United States and (2) the status of China's ongoing multilateral negotiations in the World Trade Organization.

Results in Brief

China has made substantial progress in completing its negotiations to join the World Trade Organization, which cover a range of topics in 11 broad areas. The President announced a bilateral agreement with China in November 1999 that covers four broad areas of market access issues and some other topics. In these four areas, U.S. and Chinese negotiators reached agreement on commitments that would (1) reduce China's tariffs, (2) remove its nontariff barriers such as quotas, (3) reduce its limits on trade in services, and (4) remove its barriers on trade in agricultural products.² China must conclude similar bilateral negotiations with some other World Trade Organization members, notably the European Union. However, the results of these ongoing bilateral negotiations, together with those China has completed with other members, would improve upon the commitments China made to the United States in these four areas to some degree, since under the World Trade Organization agreements, China's best market access commitments made to any country will be applied to all World Trade Organization members.

China must also complete ongoing multilateral negotiations with members of the World Trade Organization working party. These negotiations have covered issues in seven broad areas of interest to working party members regarding how China will adhere to the obligations and responsibilities created by the World Trade Organization agreements. According to our

²China must also complete negotiations with the World Trade Organization working party over minor differences on some additional topics in the agriculture area that are negotiated on a multilateral basis, such as financial support given farmers.

analysis of the negotiating record, China has already reached general agreement or has only minor differences to resolve with members of the working party on commitments in four of these areas. The commitments in these areas would (1) expand foreigners' trading rights, increase transparency (openness) in administering its trade regime, and reform other aspects of China's trade framework; (2) better protect intellectual property rights; (3) place disciplines on how China applies health and safety standards and regulatory measures to imported products; and (4) determine what compliance and monitoring mechanisms will be applied to China beyond those to which other World Trade Organization members are subject. China agreed to certain compliance and monitoring mechanisms in its November 1999 bilateral agreement with the United States, and U.S. Trade Representative officials are confident that these commitments will be incorporated in China's accession protocol and working party report without substantive change. Working party and Chinese negotiators still have differences to resolve in the other three areas of negotiation: (1) China's trade-distorting industrial policies, primarily its use of subsidies (financial assistance) to firms; (2) China's ability to use trade-related restrictions to protect its foreign currency reserves; and (3) other issues, most notably opening China's closed government procurement market. In the November 1999 bilateral agreement, China also made a number of commitments regarding its state-owned and state-invested enterprises that relate to concerns over subsidies and procurement, among other issues. U.S. Trade Representative officials are confident that these draft commitments will be incorporated into China's accession protocol and working party report without substantive change.

Background

The World Trade Organization (WTO) was established on January 1, 1995, as a result of the Uruguay Round of international trade negotiations. The WTO provides the institutional framework for the multilateral trading system. It administers rules for international trade, provides a mechanism for settling disputes, and offers a forum for conducting trade negotiations, as set forth in the WTO agreements.³ It currently has 136 members, and another 30 have applied for membership.

³The WTO agreements refer to a number of international trade agreements, including the WTO's predecessor, the General Agreement on Tariffs and Trade, which are enumerated in the 1994 Marrakesh Agreement Establishing the World Trade Organization.

China is the world's largest economy that is not subject to the WTO trade liberalizing requirements. Since 1986, China has been in negotiations to join, or "accede to," the World Trade Organization and its predecessor, the General Agreement on Tariffs and Trade. The United States has taken a leading role in these negotiations, which have been occurring on two tracks—bilateral and multilateral negotiations—over these 14 years. The process for joining, or "acceding to" the WTO consists of four phases: (1) "fact-finding," (2) negotiation, (3) WTO decision, and (4) implementation. China is currently in the second phase of this process and is negotiating with a working party comprised of all interested WTO members, including the United States, to join the WTO.⁴ These negotiations should conclude with the acceptance of two documents: (1) the protocol, which contains the terms of accession and commitments affirming China's adherence to WTO guidelines and principles⁵ and (2) the working party report, which provides a narrative on the results of the negotiations and specific commitments made by the applicant regarding how it will meet WTO requirements. Commitments detailed in either the protocol or the working party report carry the same legal weight for the applicant, according to WTO and U.S. Trade Representative officials.

A fundamental principle in the WTO agreements is that members, including the United States, must grant each other unconditional most-favored-nation status, meaning that they must grant each other trade privileges as favorable as they give to any other WTO member.⁶ China currently does not have permanent normal trade relations status in the United States because title IV of the Trade Act of 1974⁷ requires the President to deny it to certain designated countries. However, China has been granted normal trade relations status since 1979 on an annual basis. As China moves closer to becoming a member of the WTO, Congress is

⁴For a more detailed explanation of the WTO accession process, see *China Trade: WTO Membership and Most-Favored-Nation Status* (GAO/T-NSIAD-98-209, June 17, 1998).

⁵China's specific market access commitments, most notably those to reduce tariffs on industrial and agricultural products, to phase out nontariff restrictions, and to phase in access to foreign service providers, are detailed in consolidated schedules (tables) that are annexed to the protocol.

⁶In July 1998, the term "normal trade relations" replaced the term "most favored nation" in U.S. law; however, the term most favored nation continues to be used in the WTO agreements and other trade agreements.

⁷19 U.S.C. sections 2431 through 2439.

considering whether to grant China permanent normal trade relations status.

Concerns about Chinese actions regarding human rights, proliferation of weapons of mass destruction, espionage, and Taiwan, among others, have heightened the debate over whether to grant China permanent normal trade relations status as part of China's WTO membership. In response, the administration has stated its belief that bringing China into the WTO will advance critical economic and national security goals by opening a growing market to American workers, farmers, and businesses and encouraging domestic reform, human rights, the rule of law, and international cooperation. This report focuses only on certain trade issues in U.S.-China relations pertaining to China's joining the WTO.

U.S.-China Bilateral Negotiations on Market Access Issues Are Completed

The United States and China reached agreement in the bilateral track of the negotiations in November 1999 with the signing of the U.S.-China Market Access Agreement. China has been negotiating on a bilateral basis with each interested WTO member on its specific market access commitments under the WTO agreements. China's market access commitments cover 4 of the 11 areas that are under negotiation: China's tariffs; nontariff barriers (such as quotas and licensing requirements); and its agriculture and services sectors. The United States and China have agreed on the extent to which China will

- reduce or bind tariffs on its approximately 6,500 industrial and agricultural products to reach a final average of 10.2 percent (from 16.9 percent) by 2008;
- eliminate nontariff barriers, which will end quotas, licensing, and similar requirements on 361 products (which represent about 10 percent of 1997 U.S. exports to China) by 2005;
- provide varying degrees of access to 9 of its 12 services sectors—including all those identified as U.S. priorities—with certain limitations liberalized or phased out from 1 to 6 years after accession; and
- reduce tariffs on agricultural imports to 16.8 percent, from 21.4 percent, by 2004. It also agreed to improve access for some bulk commodities like wheat, corn, rice, and cotton with a new, state-administered system that applies different tariffs based on quotas of these commodities.

In addition, China had already agreed in the multilateral negotiations to not provide export subsidies for agricultural products. China must still resolve minor differences with members of the WTO working party regarding its

use of agricultural subsidies, which is a topic known as “domestic support.” Table 1 summarizes the status of these bilateral negotiations and the multilateral negotiations discussed later. Further details on the results of the negotiations appear in appendix I.

Table 1: Status of 11 Areas Under Negotiations, as of May 2000

	Area	Negotiating topics	Status of U.S.-China bilateral negotiations	Status of WTO multilateral negotiations
Market access commitments	Tariffs	<i>Tariff rates and phase-ins of reductions</i>	<i>Concluded</i>	Bilateral negotiations with some WTO members remain ^a
	Nontariff restrictions	<i>Quotas, licenses, and tendering practices</i>	<i>Concluded</i>	Bilateral negotiations with some WTO members remain ^a
	Services	<i>Business, communication, construction, distribution, education, environmental, financial, health & social services, tourism & travel, recreation & sport, transport, and other</i>	<i>Concluded</i>	Bilateral negotiations with some WTO members remain ^a
	Agriculture	<i>Tariffs, tariff-rate quotas</i>	<i>Concluded</i>	Bilateral negotiations with some WTO members remain ^a
Protocol and working party report commitments		Export subsidies, domestic support	Not subject to bilateral negotiation	Minor differences remain
	Trade framework	(1) China's trade regime: uniform administration, special economic areas, transparency, and judicial review; (2) nondiscrimination; (3) special trade arrangements; and (4) the right to trade	Not subject to bilateral negotiation	Agreement ^b
	Intellectual property rights	Patents, trademarks, & copyrights	Not subject to bilateral negotiation	Agreement ^b
	Standards and regulatory measures	Technical standards, import and export licensing requirements, sanitary and phytosanitary measures, customs valuation	Concluded ^b	Minor differences remain
	Compliance and monitoring mechanisms	<i>Product-specific safeguard, textile safeguard, methodology for assessing practices of nonmarket economies, general safeguard, and transitional review mechanism</i>	<i>Concluded</i>	Minor differences remain
	Trade-distorting industrial policies	<i>Subsidies, state trading, trade-related investment and other measures, and price controls</i>	<i>Concluded</i>	Differences remain
	Foreign currency reserves-related restraints on trade	Balance of payments measures and foreign exchange controls	Not subject to bilateral negotiation	Differences remain
	Other	<i>Government procurement, civil aircraft, taxes & charges</i>	<i>Concluded</i>	Differences remain

Note: Topics in *italics* were, at least in part, addressed in the November 1999 U.S.-China Agreement on Market Access.

^aResults of China's bilateral negotiations with all WTO members on this issue are consolidated and are subject to verification. In some cases, WTO members and China must also agree on text to appear in China's protocol or working party report.

^bAgreement in this area is subject to China and the WTO working party members reaching agreement on the final text of the protocol and working party report, which may include drafting or revising language describing China's commitments regarding individual topics.

^cThe April 1999 U.S.-China Agreement on Agricultural Cooperation addressed a number of WTO related sanitary and phytosanitary (health and food safety) measures; a few remaining issues are being addressed outside of the WTO negotiations.

Source: GAO analysis of negotiating record.

Although negotiations in these four broad areas are conducted bilaterally, any agreement reached between two countries will apply to all WTO members, as the most-favored-nation principle requires. Because China's final commitments will reflect the best made to any WTO member, the final commitments will probably improve on those made to the United States in November 1999 to some degree. China must still conclude bilateral negotiations with seven other WTO members, most notably the European Union. Once all these bilateral negotiations are completed, all of China's commitments must be consolidated and verified by the WTO working party.

China's Multilateral Negotiations Have Not Been Completed

In the multilateral negotiations, China has been negotiating specific terms with a working party of WTO members, including the United States, on how it will adhere to the obligations and responsibilities of WTO membership. For example, whether or not China will be able to take advantage of longer phase-in or phase-out periods sometimes afforded developing countries to implement its obligations under certain WTO agreements will be specified. These multilateral negotiations are conducted with the understanding that "nothing is definitively agreed until everything is agreed." Even in those areas where China and WTO members have reached general agreement, the protocol text must still be revised and finalized. Moreover, the draft working party report still requires extensive amounts of text to be drafted to capture China's commitments on implementation and to document the history of the negotiations.⁸

There has been much progress in the multilateral track, based on our review of the negotiating record. The WTO working party on China's accession, which had not met since July 1998, met in March 2000 and restarted the multilateral negotiations. Working party members reviewed the status of the negotiations, and China provided updated information on its foreign trade regime and a related listing of Chinese laws and

⁸U.S. Trade Representative officials have noted that China's working party report could end up being over 100 pages long, while the current draft is about 11 pages.

regulations. The United States and China reached bilateral agreement on certain "multilateral" subjects in November 1999, which should help speed future progress in concluding the multinational negotiations. Nevertheless, WTO working party members must still reach agreement among themselves and with China on a number of issues before the accession process can move forward. Although much of the draft protocol and working party report have generally been agreed upon, they have not been revised since May 1997, in part because the negotiators had focused on the bilateral negotiations. Furthermore, there are a number of areas where China must still provide WTO members information on its trade practices.

Multilateral Agreement in Two Areas

China and WTO working party members, including the United States, have generally reached agreement on issues in two broad areas. China has made commitments to

- change its trade framework to (1) ensure uniform and transparent administration of its trade regime subject to judicial review; (2) guarantee foreign enterprises the right to trade (import and export) after a 3-year phase-in period;⁹ and (3) change some of the practices of its special economic areas, which are geographic zones within China created partly to attract foreign capital and foster economic development and
- expand intellectual property rights by implementing the WTO agreement on Trade-related Intellectual Property Rights upon accession, which covers patents, trademarks, and copyrights, among other things.

Minor Differences Remain in Two Areas

Chinese negotiators have reached agreement with WTO members on most issues involving standards and regulatory practices and compliance and monitoring mechanisms. However, there are still some outstanding issues in both areas.

⁹Negotiations will continue over how China will phase in these trading rights.

With respect to standards and regulatory practices, the Chinese have made commitments about how the Chinese will apply health and safety measures,¹⁰ license imports and exports, generally value imports (for customs purposes) under WTO rules, and make these practices transparent (open). Nevertheless, agreement needs to be reached concerning how China will bring its administration of standards into compliance with WTO requirements. Standards are the technical and product criteria for inspecting, certifying, registering, and giving laboratory accreditation to goods or services.

Although not yet agreed to by the WTO working party, U.S. and Chinese negotiators reached agreement on most monitoring and compliance provisions. Importantly, China agreed to a 12-year, product-specific safeguard that would allow WTO members to take action against import surges of Chinese products that are causing "market disruption." Similarly, China agreed to provide WTO members safeguard protection against surges in Chinese textile imports until December 31, 2008, 4 years beyond what is permitted under WTO rules. The United States and China also reached agreement about provisions for mitigating the unfair trade practices of dumping (selling below market value) and subsidizing exports. China agreed to allow WTO members to use alternatives to China's domestic prices and costs for calculating antidumping margins for 15 years from China's accession. China also agreed to a similar provision for identifying Chinese subsidies and calculating a countervailing duty, but this provision does not expire. U.S. Trade Representative officials told us they are confident that other WTO members will accept these bilateral commitments with no substantive changes.

The working party has not yet reached agreement with China on another proposed monitoring and compliance provision that would allow WTO members to review China's implementation of its WTO commitments and assess its overall progress in making economic and trade reforms. This transitional review mechanism issue remains open and will be dealt with further in the working party. Also, in return for other commitments, notably

¹⁰In April 1999, the United States and China concluded a separate but related bilateral Agreement on U.S.-China Agricultural Cooperation, which addressed some health and food safety issues. The agricultural cooperation agreement eliminated Chinese bans on importing certain U.S. agricultural commodities, including wheat and other grains, meat, and citrus, which the Chinese contended were a health risk. U.S. negotiators told the Chinese this agreement was important to demonstrate their willingness to abide by WTO requirements for sanitary and phytosanitary measures.

the strong, product-specific safeguard, the United States dropped its objective to have China agree to a "general safeguard" that would have allowed WTO members broader discretion to suspend some or all WTO benefits to China.

Differences Remain in a Few Other Areas

Chinese and working party negotiators still must resolve differences in 3 of the 11 areas under negotiation—trade-distorting industrial policies, primarily subsidies; restraints on trade related to foreign currency reserves; and "other" issues, most notably government procurement. While negotiators have made progress on some individual issues, differences remain over other issues. U.S. negotiators have noted that these areas, which are generally subject to multilateral negotiations, have not been discussed with the Chinese in recent years in the working party. However, the November 1999 U.S.-China bilateral agreement included some draft language that seemed to narrow the differences on some topics.

The first area where there are differences to resolve is China's trade-distorting industrial policies. Specifically, while China has agreed to eliminate certain subsidies (financial assistance) prohibited by the WTO agreements, Chinese and working party negotiators must agree on which WTO trade remedies WTO members will be able to use against other types of Chinese subsidies, if they are shown to adversely impact a member. Similarly, while China has made commitments restraining its use of trade-related restrictions on foreign investment, and price controls, and to abide by existing WTO rules regarding government-sanctioned enterprises (state trading), it must, for example, reach agreement with working party members over the final lists of affected products. Notwithstanding these differences, in November 1999, U.S. and Chinese negotiators reached bilateral agreement on defining what constitutes subsidies for China's state-owned enterprises, on what products will be imported by China's state trading enterprises, and a Chinese commitment that various activities of state-owned and state-invested enterprises will be based solely on commercial considerations (without government influence.) They also agreed on when China will discontinue WTO-prohibited practices that impose trade-related conditions on foreign investments and similar practices, including technology transfer requirements.

The second area is China's potential use of foreign currency reserves-related restraints on trade. WTO working party members have been concerned about China potentially using WTO provisions on balance of payment and foreign exchange controls to inappropriately restrict trade.

Under the WTO agreements, members are allowed to temporarily restrict imports or access to foreign currency under certain adverse macroeconomic conditions in order to increase foreign currency reserves. China has made changes in its currency exchange regime since the working party last had substantive discussions in this area several years ago, and WTO negotiators must decide on what provisions, if any, are necessary.

The third area where negotiators have differences to resolve is a group of miscellaneous topics that could have a significant trade impact. For example, WTO members have asked China to agree to begin negotiations on the trade-liberalizing obligations of the Agreement on Government Procurement and the Agreement on Trade in Civil Aircraft, both of which are optional for WTO members. China has not made offers to join either agreement. However, in its November 1999 bilateral agreement with the United States, China agreed that purchases by state-owned or state-invested enterprises would be based on commercial considerations and would not be considered government procurement, which is otherwise exempt from WTO obligations.¹¹

Agency Comments and Our Evaluation

We obtained oral comments on a draft of this report from various officials at the Office of the U.S. Trade Representative, which included the views of the General Counsel. The Office provided us technical and clarifying comments on our draft report, which we incorporated as appropriate. While they generally agreed with the contents of our report, U.S. Trade Representative officials had concerns about our grouping issues under negotiation and had different opinions than GAO about the importance of unresolved areas and on the relative value of particular commitments. We did not attempt to weigh the importance of the issues under negotiation, and we believe that our analysis presents Congress with an objective framework for understanding the many issues being negotiated, as well as their status.

¹¹Chinese negotiators have agreed to commitments on another miscellaneous topic—regarding China's ability to apply taxes and charges (other than tariffs) on trade. However, China and working party members still have minor differences to negotiate over what exports will be subject to duties.

Scope and Methodology

This report is based on our past and ongoing work on China trade issues;¹² our review of WTO and executive branch documents; U.S. law; related literature; economic literature; and our discussions with U.S. government, WTO, and foreign government officials. More specifically, to assist Congress in its oversight and upcoming debate on U.S.-China trade policy, we updated our past work on the status of the WTO accession negotiations and the results of the negotiations. We reported some of this information in a March 17, 2000, report. We extracted certain sections of our September 30, 1999, report (including all our summary tables and graphs) that were subsequently declassified by U.S. Trade Representative officials and updated them to reflect new developments in the negotiations based on the November 1999 agreement, other executive branch documents, and meetings with U.S. government officials. Our methods of analysis are described in more detail in our 1999 report.

We conducted our work from November 1999 through May 2000 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Honorable Charlene Barshefsky, the U.S. Trade Representative; the Honorable William M. Daley, Secretary of Commerce; the Honorable Dan Glickman, Secretary of Agriculture; the Honorable Lawrence F. Summers, Secretary of the Treasury; and interested congressional committees. Copies will be made available to others on request.

For future contacts regarding this report, please call me at (202) 512-4128. Other GAO contacts and staff acknowledgments are listed in appendix II.

Susan S. Westin

Susan S. Westin, Associate Director
International Relations and Trade Issues

¹²See a list of some related GAO products at the end of this report.

China's World Trade Organization Commitments

China has made substantial progress toward completing its negotiations to join the World Trade Organization (WTO). In this appendix, we describe China's commitments as of May 2000 and describe the issues under negotiation in each of the areas, as appropriate. To group the major issues, we developed an analytical framework that encompasses both the bilateral and multilateral negotiations. Specifically, we grouped the many market access issues in the bilateral negotiations into four broad areas: (1) tariffs; (2) nontariff restrictions; (3) access to services markets; and (4) agricultural trade practices, although some topics in the latter area are negotiated on a multilateral basis. We grouped the many issues under consideration in the multilateral negotiations into seven broad areas: (1) China's trade framework, (2) intellectual property rights protection, (3) standards and regulatory measures, (4) compliance and protection measures, (5) trade-distorting industrial policies, (6) foreign reserves-related restraints on trade, and (7) other miscellaneous issues.

Commitments Subject to Bilateral Negotiations

Tariffs

Although the United States and China reached agreement in November 1999 on China's tariff commitments,¹ China must still conclude bilateral negotiations with some other countries before its WTO tariff commitments can be finalized. The high levels of tariffs that China imposes on its imports—these tariffs can be as high as a prohibitive rate of 100 percent on some goods—have been a concern to negotiators. Since these tariffs have the effect of restricting the amount of goods that China imports, negotiators asked China to “bind”² all its tariffs at a certain level. According to their particular commercial interests, each working party member, including the United States, also requested particular rates on

¹A tariff is like a tax, in that China (or any other country) collects a fee based on a given percentage value of an imported product or a specific rate per unit of the product.

²In international trade, the concept of “binding” is defined as a legal obligation not to raise tariffs on particular products above the rate specified in the country's “schedule of concessions.” Bound tariffs provide greater commercial certainty by creating a ceiling on tariffs that a country can apply.

some of the 6,450 products (industrial and agricultural goods) that China trades.

In November 1999, the United States and China reached bilateral agreement on China's bound tariff rates³ (see table 2). China's average tariff would fall from its 1999 rate of 16.9 percent to 10.2 percent (see fig. 1). On industrial products, the overall average would be 9.4 percent, and on agricultural products, 16.8 percent. For agricultural products the United States considers priorities, the average rate would be 14.7 percent. These reductions would be phased in over time (see fig. 2). China's actual, or "applied," tariffs have decreased during the negotiations in the past several years. China's average applied tariff decreased from 42.8 percent in 1992 to 16.9 percent in 1998. Figure 1 illustrates the decline in China's applied tariff rates from 1992 to 1998 and the final, agreed-upon tariff average. Nevertheless, China would need to reduce its tariffs further in all sectors to match the final rates agreed upon with the United States in November 1999 (see table 3).

Table 2: Results of U.S.-China Tariff Negotiations

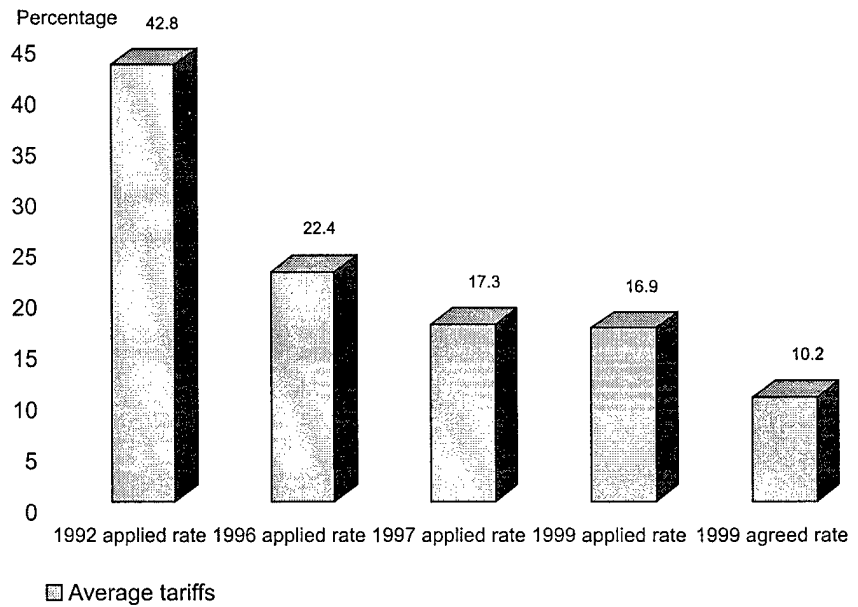
	China's applied tariff rates (1999)	U.S.-China agreed tariff rate (November 1999)	Difference between 1999 applied rate and agreed rate
All products	16.9%	10.2%	6.7%
Industrial products overall	16.3	9.4	6.9
Industrial products with a particular request	16.6	8.2	8.4
Agriculture overall	21.4	16.8	4.6
Agriculture priorities ^a	30.8	14.7	16.1

^aThe U.S. request on agriculture products focused on high-priority items out of the 900-plus items on China's tariff schedule.

Source: GAO analysis.

³These rates are subject to verification and correction and may improve if other countries achieve larger concessions in their bilateral negotiations.

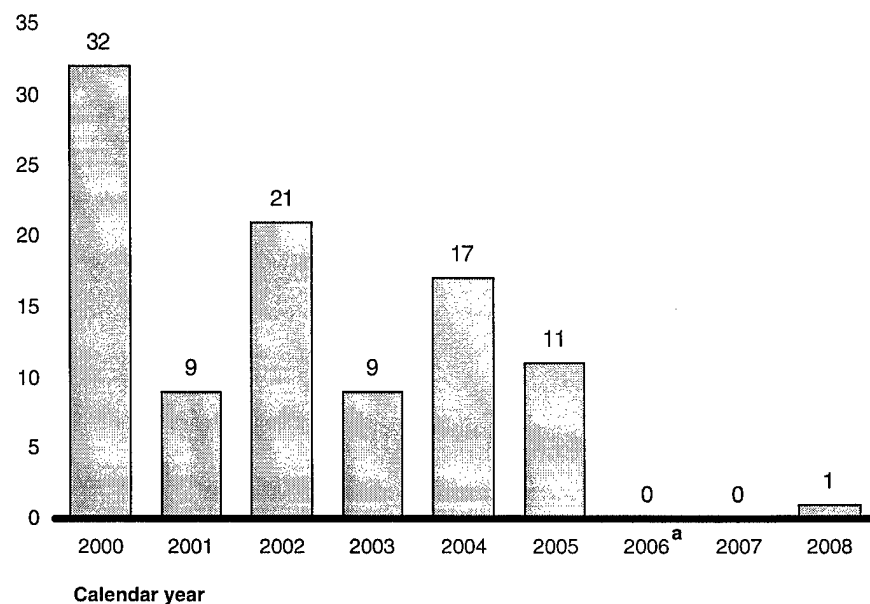
Figure 1: China's Applied Tariff Rates, 1992-1999, and Agreed Rate Under the November 1999 U.S.-China Bilateral Agreement



Source: GAO analysis.

Figure 2: Percentage of Potential U.S. Exports to China by Year in Which Final Tariff Rate Is Achieved, 2000-2008

Percentages total to 100 percent



Note: Potential exports are a GAO proxy representing the U.S.' export potential to China as a WTO member, and were used in order to account for the trade-distorting effects of existing tariff barriers.

^aIn November 1999, the United States and China agreed to phase-in tariff cuts for some autos and auto parts by 2006 (rather than 2005) with larger reductions in the tariff rates for these products in earlier years. However, these changes are not included in our analysis and some percentage of potential U.S. exports to China will have the final tariff rate phased in by 2006 rather than 2005.

Source: GAO analysis.

Appendix I
China's World Trade Organization
Commitments

Table 3: China's Applied and Agreed Tariff Rates by Sector

Sector	China's applied rates, 1999 (percent)	U.S.-China agreed rates November 1999 (percent)	Difference between China's applied rates and agreed rates	U.S. 1998 exports to China (millions)	Tariff rate phase-in period (years)
Autos, vehicles, and auto parts	28.2	12.1	16.1	\$3,746	2.5 ^a
Textiles and apparel	25.3	12.1	13.2	173	4.1
Prepared foods, beverages, spirits, and tobacco	29.4	22.4	7.0	87	1.7
Wood, paper, and leather products	13.6	7.6	6.0	770	2.0
High-tech apparatus	14.6	8.8	5.8	4,892	1.7
Miscellaneous manufactured goods	20.1	14.3	5.8	100	1.6
Animal and plant products	19.5	14.1	5.4	218	2.0
Chemicals, plastics, and minerals	10.5	6.9	3.6	2,198	1.5
Low-tech manufactured goods and base metals	10.1	7.2	2.9	423	0.9
Nonmetallic minerals and jewelry	17.1	14.2	2.9	116	0.8

^aIn November, the United States and China agreed to phase in tariff cuts for some autos and auto parts by 2006 (rather than 2005) with larger reductions in the tariff rates for these products in earlier years. However, these changes are not included in our analysis and the tariff rate phase-in period will be somewhat longer.

Source: GAO analysis.

Nontariff Restrictions

U.S. and Chinese negotiators reached bilateral agreement in November 1999 on eliminating China's nontariff measures that restrict trade in industrial goods (see table 4). However, bilateral negotiations with some other WTO members remain before China's commitments in this area can be finalized. China's commitments with the United States would eliminate or phase out these restrictions, which affect a variety of product categories, within 5 years (see fig. 3). These commitments are subject to verification and rectification (minor corrections.) In 1998, these restrictions applied to over 8 percent of U.S. exports to China (see table 5). WTO members have voiced concern regarding China's nontariff restrictions on imports, including (1) quantitative limits China imposes on imports (quotas), (2) Chinese requirements that companies obtain governmental approval and submit documentation before importing (licenses), and (3) requirements that private citizens obtain government approval before making major purchases (tendering). China provides little transparency regarding the quantity or value of products that are subject to these measures, according to the U.S. Trade Representative. Article XI of the

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1994 General Agreement on Tariffs and Trade generally prohibits
quantitative restrictions on trade.

Table 4: Results of WTO Negotiations on China's Nontariff Measures, as of May 2000

Negotiating topic	In the WTO multilateral negotiations, China	In the November 1999 U.S.-China bilateral negotiations, China
Existing nontariff measures	Must conclude bilateral negotiations with some other WTO members	Agreed to eliminate or phase out quotas, licenses, and tendering restrictions on 282 products, Agreed that the longest phase-out period would last 5 years Agreed that the size of quotas to be phased out would grow during this period from a negotiated base rate ^a for each product according to a negotiated growth rate
New nontariff measures	Has agreed to not implement new nontariff measures during the negotiations Has agreed to not implement new nontariff measures following accession	Not subject to bilateral negotiation Not subject to bilateral negotiation
Implementation	Agreed that any import or export restrictions will be implemented only by national authorities	Not subject to bilateral negotiation

^a"Base rate" refers to the amount imported during a certain "base year" that will serve as the "base" for calculating the import levels allowed under quota in later years, based on the growth rate.

Source: GAO analysis.

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Table 5: Results of U.S. China Negotiations on Goods Subject to Phaseout of China's Nontariff Measures

GAO product category	Number of products subject to nontariff restrictions			Average phaseout period (years)			Longest phaseout (years)	Value of U.S. exports to China, 1998 (millions) ^a	Percent of U.S. exports to China, 1998
	L&Q	T	Total	L&Q	T	Total			
Chemicals, plastics, and minerals	43	0	43	2.4	N/A	2.4	4	\$878	6.5%
Textiles and apparel	26	0	26	1.0	N/A	1.0	N/A	11	0.1
High-tech manufactured goods	52	75	127	1.8	2.0	1.9	4	216	1.6
Autos, vehicles, and auto parts	71	9	80	4.0	2.7	3.8	5	23	0.2
Miscellaneous manufactured goods	6	0	6	3.0	N/A	3.0	3	0.004	0
Total	198	84	282	2.7	2.0	2.5	5	\$1,128	8.4

Legend

L&Q = licenses and quotas

T = tendering

N/A = not applicable

Note 1: Numbers may not add up precisely because of rounding.

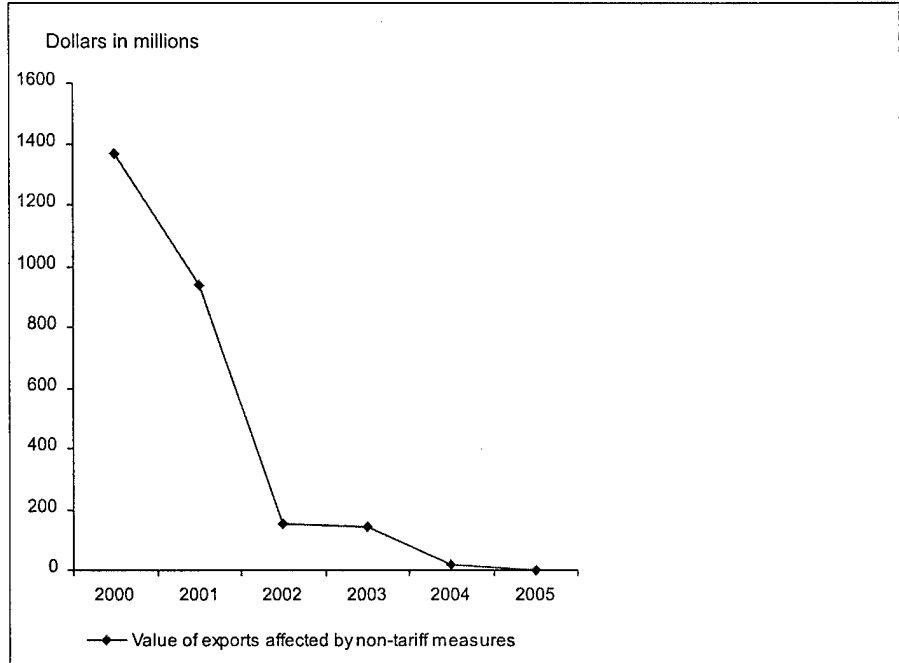
Note 2: No products have both licenses and quotas and tendering restrictions placed on them. All quotas are accompanied by a license.

^aThe export value is only for those items with a nontariff measure.

Source: GAO analysis.

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Figure 3: Value of China's Nontariff Restrictions on U.S. Exports and Their Phaseout, 2000-2005, Under the November 1999 U.S.-China Bilateral Agreement



Note: Based on actual U.S. exports to China in 1998.

Source: GAO analysis.

Services

The United States and China reached agreement on China's service sector commitments in November 1999, although China must still conclude bilateral negotiations with some other countries before finalizing its WTO services commitments. Trade in services is fundamentally different than trade in goods, in that services are not physical items that are shipped across a border. Some services covered by the 12 general sectors⁴ are supplied across borders, such as an overseas telephone call, or by people who cross borders either to obtain or deliver a service, such as a patient or doctor traveling for medical treatment. However, other services are supplied through establishing a commercial presence in the country, often through foreign investment, such as a bank selling financial services.

In November 1999, the United States and China reached agreement on China's commitments to open its services sector.⁵ China agreed to open 9 of its 12 service sectors—including all those that were identified as U.S. priorities—to foreign service providers, though with some specified limitations (see table 6). Individual WTO members' commitments vary widely in scope and depth and usually do not include all 12 service sectors. As the world's largest exporter of services, with 1997 exports valued at about \$230 billion by the WTO, the United States seeks access to China's growing services market. Only 2 percent of U.S. services exports currently go to China.

⁴The WTO categorizes services into 12 general service sectors: (1) business; (2) communication; (3) construction; (4) distribution; (5) education; (6) environmental; (7) financial; (8) health and social (other than medical, dental, and similar professional services); (9) tourism and travel; (10) recreation, cultural, and sporting; (11) transport; and (12) other services.

⁵These commitments are subject to verification and correction and may improve if other countries achieve larger concessions in their bilateral negotiations.

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Table 6: China's Service Sector Commitments in November 1999 U.S.-China Bilateral Agreement

12 WTO service sectors and key subsectors ^a	Commitments upon accession on foreigners' access that are eliminated or reduced, and phaseout periods	Final commitments on foreigners' access
1. Business		
Professional:		
• legal	Quantitative ^b and geographic location limits eliminated after 1 year	Open, with limitations on scope of business, legal forms of establishment, professional requirements, other ^c
• auditing, accounting, taxation, etc.	Limits on legal form of establishment and share of foreign equity investment (taxation only) are eliminated after 6 years	Otherwise, open upon accession, with professional requirements ^c
• architectural, engineering, etc.	None	Open upon accession, with limitations on cross-border supply, legal forms of establishment, professional requirements ^c
Computer & related	Some (maintenance and repair only) legal forms of establishment, share of foreign equity investment limits liberalized after 1 year and eliminated after 3 years	Otherwise, open upon accession, with professional requirements, scope of business limitations; ^d some limitations on legal forms of establishment and cross-border supply of software implementation services
Rental & leasing	Limits on legal forms of establishment and share of foreign equity investment liberalized after 1 year and eliminated after 3 years	Open, with some scope of business limitations ^d
Other business services ^e	Legal forms of establishment, share of foreign equity investment limits in about ¼ of the subsectors liberalized in 1 or 2 years and eliminated in 3, 4, or 6 years	½ subsectors open, with cross-border supply, legal forms of establishment, or other limitations in about ½ the opened subsectors
2. Communication		
Courier	Legal forms of establishment and share of foreign equity investment limits liberalized after 1 year and eliminated after 4 years	Open
Basic telecommunications	Generally no new access for 3 years, ^f then initial cross-border supply and share of foreign equity investment limits liberalized after 3 and 5 years; geographic location limits liberalized after 5 and eliminated after 6 years	Open, with limitations on cross-border supply, legal forms of establishment, share of foreign equity investment (49%), and scope of business ^{c, d}
Value-added telecommunications	Limits on cross-border supply and share of foreign equity investment liberalized after 1 and 2 years; those on geographic location liberalized after 1 year and eliminated after 2 years	Open, with limitations on cross-border supply, legal forms of establishment, and share of foreign equity investment (50%)
Audio-visual	None	Open upon accession, with limitations on legal forms of establishment, and some share of foreign equity investment (49%), scope of business, ^d and quantitative limits
3. Construction	None	Open upon accession, with limitations on scope of business, legal forms of establishment, and other limitations

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12 WTO service sectors and key subsectors^a	Commitments upon accession on foreigners' access that are eliminated or reduced, and phaseout periods	Final commitments on foreigners' access
4. Distribution		
Wholesale trade & commission agents	No market access for distribution of imported goods until after 1 year, then initial limits on legal forms of establishment and share of foreign equity investment, liberalized after 2 and eliminated after 3 years; some other product limitations eliminated in 3 or 5 years	Open, with limitations on cross-border supply and some other limitations ^c
Retailing	Some limits on legal forms of establishment, share of foreign equity investment, geographic location, and quantitative limits liberalized after 2 and eliminated after 3 years; some other limitations eliminated after 1, 3, or 5 years	Open, with limitations on cross-border supply, and some legal forms of establishment, share of foreign equity investment (49% in large stores & chains), scope of business, and other limitations
Franchising & other	No market access for distribution of imported goods until after 3 years	Open
5. Education	None	Open upon accession, with limitations on cross-border supply, scope of business, legal forms of establishment, professional requirement, and other limitations
6. Environmental	None	Open upon accession, with limitations on cross-border supply, scope of business, and legal form of establishment
7. Financial		
Insurance	Limits on share of foreign equity investment liberalized after 1 and 2 years; geographic location liberalized after 2 and eliminated after 3 years; scope of business limitations liberalized after 4 and some eliminated after 5 years	Open, with some cross-border supply, scope of business, legal forms of establishment, share of foreign equity investment (50% in life insurance), and other limitations
Banking	Limits on geographic location liberalized each year; some scope of business liberalized after 2 years; these and quantitative and some other limitations eliminated after 5 years	Open, with cross-border supply, scope of business, and other limitations ^c
Securities	Some limits on legal forms of establishment, share of foreign equity investment, scope of business liberalized after 3 years	Open, with cross-border supply, scope of business, legal forms of establishment, foreign equity investment (33, 49%), and other limitations
Advisory and other financial services	None	Open upon accession, with limitations on cross-border supply
8. Health & Social (other than medical and dental)	None	No commitments
9. Recreation, cultural & sport	None	No commitments
10. Tourism & travel related	Legal forms of establishment, share of foreign equity investment, geographic location area, some scope of business, and other limitations liberalized or eliminated after 3 or 5 years	Open, with limitations on scope of business ^d and other limitations ^c

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12 WTO service sectors and key subsectors ^a	Commitments upon accession on foreigners' access that are eliminated or reduced, and phaseout periods	Final commitments on foreigners' access
11. Transport	Some legal forms of establishment, share of foreign equity investment, liberalized and/or eliminated after 1, 3, 4, or 6 years	Seven of nine subsectors open, with various limitations on cross-border supply, legal forms of establishment, scope of business, ^d quantitative and/or other limitations ^c
12. Other	None	No commitments

^aFor purposes of analysis, these commitments are organized according to the standard WTO listing of services and not by the organization in the text of the November 1999 agreement.

^bQuantitative limits include restrictions on the number of service providers and/or times a service can be provided.

^cAlso, fees and charges for some services are subject to state pricing under protocol provisions on price controls.

^dScope of business is limited by the specific exclusion of one or more services from China's proposed commitments.

^eIncludes advertising; management consulting; technical testing and analysis; scientific and technical consulting; maintenance & repair of equipment; photographic; packaging; convention; and translation and interpretation services.

^fPaging and mobile services commitments begin earlier and are phased in faster than other basic telecommunication commitments.

Source: GAO analysis.

China's market has remained essentially closed to foreign service providers, according to U.S. Trade Representative reports. Foreign service providers are often only allowed to operate under selective "experimental" licenses and are restricted to conducting business in specific geographic areas and to a specific scope of operations. Similarly, investment restrictions limit how foreigners may establish a commercial presence; for example, they may be forced into a joint venture with Chinese partners and not be allowed to establish a wholly owned subsidiary. Moreover, China treats foreign service suppliers differently than domestic firms; that is, it denies them national treatment. China's policies favor domestic firms over foreign firms and impose significant administrative restrictions on foreign firms but not domestic firms.

Multilateral rules covering trade in services have only existed since January 1995, when the WTO General Agreement on Trade in Services went into force. While there is a framework of rules that WTO members follow, these rules apply only where a country makes a specific commitment to grant access to foreign services, and exemptions are allowed. Individual WTO members each have specific commitments in individual service sectors and have granted market access subject to specified limitations, such as those on the number or scope of business that is permitted. Thus, there is no

general requirement that WTO members open their services market to foreigners and grant them national treatment.

Agriculture

The United States and China reached agreement on many agricultural issues in November 1999. However, China has yet to conclude bilateral market access negotiations with some WTO members on agricultural tariffs and related topics. In addition, minor differences remain on protocol and working party report commitments on agriculture topics under multilateral negotiation. While China made commitments to the WTO working party to eliminate export subsidies, there are outstanding issues to resolve concerning China's domestic support to its farmers. (See table 7 for the status of the agriculture negotiations.)

Table 7: Status of Negotiations on Agriculture, as of May 2000

Agriculture issue	In the WTO multilateral negotiations, China	In the November 1999 U.S.-China Bilateral negotiations, China
Tariffs	Must conclude bilateral negotiations with some other WTO members	Agreed to reduce tariffs on all agricultural items to 16.8 percent and on priority items to 14.7 percent
Tariff-rate quota system for bulk commodities	Must conclude bilateral negotiations with some other WTO members	Agreed to provide managed market access for specific products (see table 8 for details)
Domestic subsidies	Will cap and reduce the amount of its domestic support under the WTO agriculture agreement. However, negotiations continue on what is counted as a subsidy and on the level of reduction	Not subject to bilateral negotiation
Export subsidies	Has agreed to zero export subsidies on all agricultural products	Not subject to bilateral negotiation

Source: GAO analysis.

In November 1999, U.S. and Chinese negotiators reached agreement on tariff reductions for agricultural products, including substantial tariff reductions on items the United States deems as "high-priority," and foreign access opportunities for other key agricultural commodities negotiated as part of a "tariff-rate quota" (TRQ) system, which is explained later. China committed to reduce its overall agricultural tariffs to an average of 16.8 percent (see table 2), which is a 4.6 percent decrease. For 62 of the 942 products, China will meet these tariff commitments upon its accession to the WTO; for the remainder, it will phase in its final agreed rate to meet the agreed level by 2004.

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U.S. and Chinese negotiators also reached agreement on specific rules for how China would administer a TRQ system to provide controlled market access for several sensitive bulk agricultural commodities, including wheat, corn, rice, and cotton, among others (see tables 8 and 9). These changes are intended to improve predictability, expand private competition, reduce state intervention, and increase the transparency of the system. China's TRQ system, like those currently used by the United States and other WTO members on some products, would allow imports to enter at a low tariff rate up to an agreed quota level, with any additional imports to be taxed at a higher tariff rate. Exporters from different foreign countries would each compete for a share of the quota (see fig. 4). While much of this trade would go through Chinese state trading enterprises, which are discussed later, some private trading in these commodities would be allowed with provisions to help ensure that import quota amounts are used (see figs. 5 and 6 and table 9). China's quota commitments for wheat, corn, rice, and cotton appear generous in that U.S. 1998 exports of these commodities to China represent between less than 1 percent to 10 percent of China's initial quota commitments. They also represent between 6 and 27 percent of China's reported total imports in 1998. China's initial soybean oil commitment is approximately equal to U.S. Department of Agriculture estimates of China's total soybean oil imports from all countries in 1998.

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Table 8: Results of November 1999 U.S.-China Negotiations on Administration of China's Tariff-rate Quota System

Negotiating issues	China agreed^a to
Improve predictability	Set an annual quota allocation
Increase private competition	Reserve a portion of all quotas for private traders
	Reallocate and make available for import through any entity the state-traded quota portion not imported by certain date ^b
	Reallocate unused quota quantities; however, end-users cannot transfer import quota allocation so that allocation will eventually go to users with the strongest import interest
	Allow items under quota to be imported on a first-come, first-served basis or by request of applicants and their historical import performance, production capacity, or other relevant commercial criteria
Reduce state intervention between buyers and sellers	Allocate quotas directly to end-users
	Allow access to China's distribution system
	Allow end-users allocated state-traded share of quotas to import directly or through other entities after certain date
Increase transparency	Respond to inquiries on what entities received the quota allocations (there is no reporting to WTO of entities receiving quota allocations)

^aAgreement on this topic is subject to China and the WTO working party members reaching agreement on the final text of the protocol and working party report, which may include drafting or revising language describing China's commitments regarding individual topics.

^bQuotas represent import opportunities and are not minimum purchase requirements guaranteeing that the amounts will be completely used (imported).

Source: GAO analysis.

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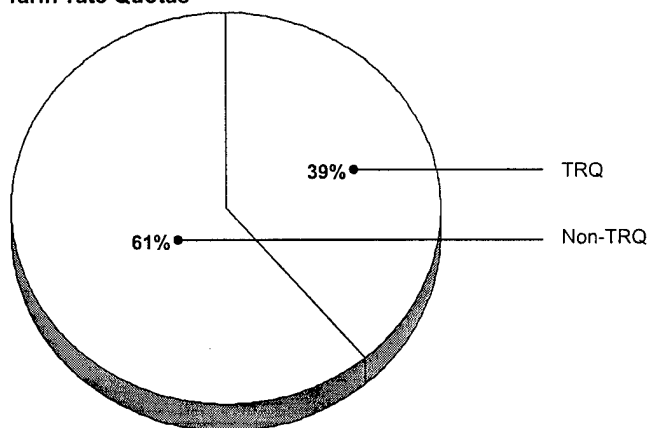
Table 9: Products Covered by Tariff-rate Quota Provisions in the November 1999 U.S. China Agreement

Product	U.S. exports to China in 1998, value and metric tons (MT) exported	Tariff Rate Quota provisions in November 1999 agreement					Percent of quota reserved for private traders
		Initial quota quantity (million MT)	Final quota quantity (million MT)	In-quota tariff (percent)	Out-of-quota tariff (percent)	End of transition period that begins in 2000	
Wheat (five products)	\$46 million. 315,839 MT	7.3	9.6	Range: 1-10	80, reduced to 65	2004	10 - with no growth
Corn (five products)	\$44 million. 366,553 MT	4.5	7.2	Range: 1-10	80 for most lines, reduced to an average of 51	2004	25 growing to 40
Rice (six products)	\$288,844. 493 MT	2.7 ^a	5.3	1 and 9	80 for most lines, reduced to an average of 43	2004	50 for short- & medium-grain rice; 10 for other rice
Soybean oil (two products)	\$312 million. 521,835 MT	1.7	3.3	9	85, reduced to 9	2006	50 growing to 100
Cotton (two products)	\$118 million. 77,014 MT	0.7	0.9	1	76, reduced to 40	2004	67

^aThere are subquota allocations for the overall quota on rice (50 percent for short or medium grain; 50 percent for long grain).

Source: GAO analysis.

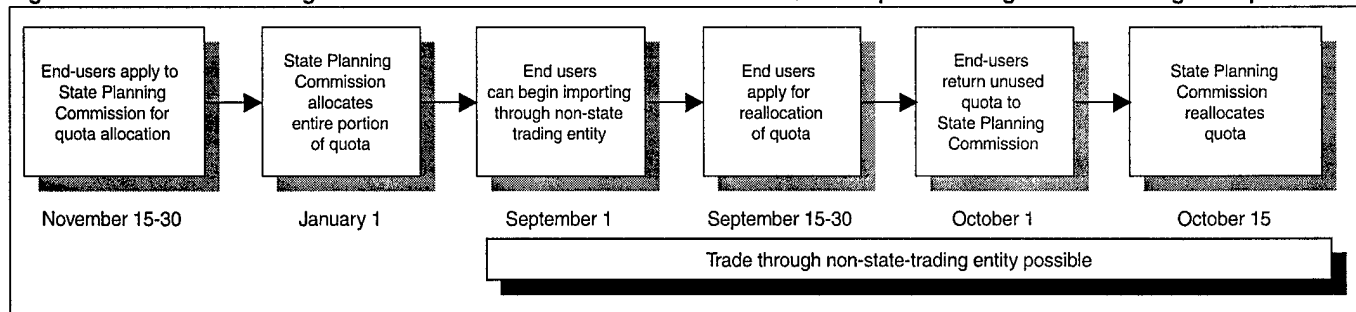
Figure 4: Share of 1998 U.S. Agricultural Exports That Would Be Covered by Tariff-rate Quotas



Source: GAO analysis.

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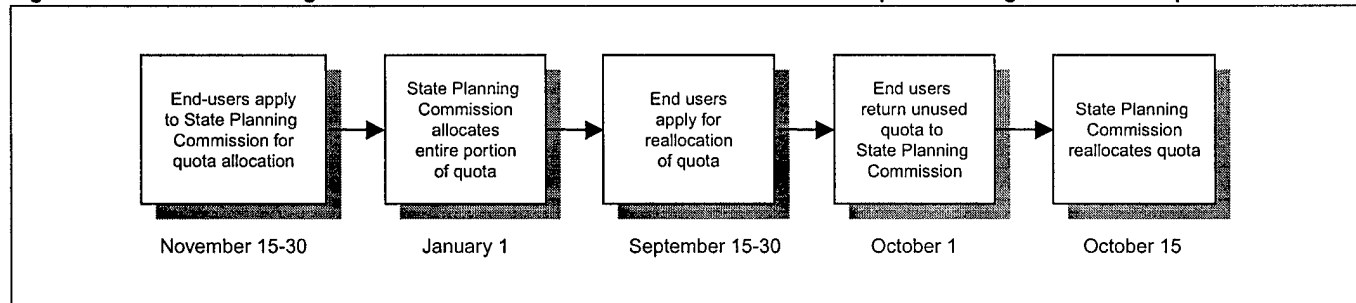
Figure 5: November 1999 Agreed Annual Schedule for China's Tariff-rate Quota Imports Through State Funding Enterprises



Note: The United States and China did not reach final agreement that the State Planning Commission is the administering authority; this issue will be decided in the multilateral negotiations.

Source: GAO analysis.

Figure 6: November 1999 Agreed Annual Schedule for China's Tariff-rate Quota Imports Through Private Enterprises



Note: The United States and China did not reach final agreement that the State Planning Commission is the administering authority; this issue will be decided in the multilateral negotiations.

Source: GAO analysis.

Commitments Subject to Multilateral Negotiations

China's Trade Framework

According to U.S. negotiators and WTO officials, the substance of commitments covering China's trade framework are agreed.⁶ To become a WTO member, China will need to make significant changes in how it administers its foreign and domestic trade. China currently retains elements of a restricted system that discriminates against foreign firms despite its continuing transition to an open market economy. This framework covers a number of issues that would apply broadly to how China manages its trade regime.

More specifically, China's commitments in this area cover (1) transparency, (2) right to trade, (3) nondiscrimination, (4) uniform administration of China's trade practices, (5) special economic areas, (6) special trading arrangements, and (7) judicial review issues (see table 10). U.S. and private industry representatives have considered both the degree of transparency in China's trade regime, and the extent to which China provides both foreign and Chinese individuals and business firms the "right to trade," defined as the right to import and export goods and services, as two of the major issues in the negotiations. They have also been concerned about China's discriminating against foreign individuals and entities, applying its trade laws and other measures differently throughout China, providing preferential treatment to specially designated economic areas, and China's lacking independent adjudicating bodies to handle trade-related complaints.

⁶China's commitments in these areas are subject to China and the WTO working party members reaching agreement on the final text of the protocol and working party report, which may include drafting or revising language describing China's commitments regarding individual topics.

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Table 10: Results of WTO Working Party Negotiations on China's Trade Policy Framework

Trade framework issue	Commitments agreed to in WTO protocol and working party report ensure that...
Transparency	<p>China publishes trade measures in officially designated journal and allows public comment before implementation, but a minimum time period between publishing and implementing trade measures is still under negotiation</p> <p>China provides translations of trade measures into one or more official WTO languages before measures are implemented, to maximum extent possible</p> <p>China establishes central government inquiry point for providing official answers about trade measures</p> <p>China responds to most inquiries in 30 days and exceptional inquiries in 45 days</p> <p>China permits, and does not claim as confidential, publication of initial quota levels and quota growth rates before quotas are implemented for a given product</p>
Right to trade	<p>China grants right to import and export goods^a to all enterprises in China, to be phased in within 3 years of accession. Generally includes national treatment for distribution of goods. Subject to exceptions for some goods of state trading enterprises. How rights are to be phased in is still under negotiation.</p> <p>All foreign individuals and enterprises are provided trading rights no less favorable than Chinese enterprises</p> <p>Chinese enterprises can trade in all goods^b by a certain date, but no right to import and export given to Chinese individuals</p> <p>National treatment commitment applies both to granting and regulation of trading rights</p>
Non-discrimination	<p>China treats imported goods no less favorably than domestically produced goods for foreign individuals and enterprises, including foreign-owned enterprises, regarding procurement of goods and services necessary for production and prices and availability of goods and services supplied by public entities.^a</p> <p>Additional protocol language that certain exceptions to nondiscrimination do not undercut commitments is still being considered by the working party</p>
Uniform administration of trade measures	<p>Trade measures are applied uniformly throughout China, including at subnational level, that is, provincial and local levels</p> <p>Types of trade measures are broadly defined</p> <p>China clearly defines territorial coverage of its commitments</p> <p>Trade measures, including at subnational level, are consistent with WTO rules</p> <p>Mechanism is established for receiving complaints regarding nonuniform application</p> <p>China treats goods and services of separate customs territories, such as Hong Kong and Macau, like those of other WTO members and does not grant preferential treatment to imports from China Taipei</p>
Special economic areas	<p>Goods and services entering rest of China from special economic areas receive same treatment as other imports</p> <p>China clarifies whether commitments to special economic areas would also extend to its open coastal cities and special economic and technological development zones</p> <p>China notifies WTO within 60 days and in an official WTO language—english, french, or spanish—of any changes in trade measures pertaining to special economic areas</p>

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Trade framework issue	Commitments agreed to in WTO protocol and working party report ensure that...
Special trading arrangements ^a	No specific commitment, but China must eliminate or conform all of China's special trade arrangements with WTO requirements
Judicial review	China establishes independent tribunals to review broad array of administrative actions regarding implementation of China's trade regime, including those involving balance of payments and some services
	China revises patent and trademark laws and regulations to be consistent with WTO commitments upon accession
	China provides a right of appeal in trade disputes to a judicial body if first appeal is to administrative agency

^aAgreement in this area is subject to China and the WTO working party members reaching agreement on the final text of the protocol and working party report, which may include drafting or revising language describing China's commitments regarding individual topics.

^bConsistent with usual WTO practice, trading rights and national treatment for services have been negotiated with China on a sector-by-sector basis.

^cMost such arrangements relate to border trade, for example, local trade at the China-Russia border, and barter trade.

Source: GAO analysis.

Intellectual Property Rights Protection

China has agreed to implement the WTO's Agreement on Trade-Related Intellectual Property Rights upon accession, and thus negotiations have generally been concluded in this area. China's intellectual property rights laws are now approaching WTO norms, according to the U.S. Trade Representative. This agreement defines both the scope and enforcement procedures of intellectual property rights in various areas. These areas include copyrights, trademarks, patents, geographic indications (where particular characteristics of a good are related to its geographical origin), industrial designs, layout designs of integrated circuits (semiconductor chips), protection of undisclosed information (trade secrets), and control of anticompetitive practices in contracts. The agreement also provides recourse to the WTO's dispute settlement mechanism, which allows members to challenge the adherence of another member to the agreement. To implement the WTO agreement, China will need to make additional changes in its laws, some in the areas of copyrights and trademarks. According to U.S. Trade Representative officials, such changes would provide further protections to U.S. producers beyond those gained in existing bilateral agreements.

The adequate protection of intellectual property rights in China has consistently been a principal area of concern for the United States. Since 1986, the United States has engaged China in discussions over intellectual property rights protection and has signed bilateral agreements on such rights in 1992, 1995, and 1996. These bilateral agreements have prompted

China to make improvements in its laws governing intellectual property rights protections. Despite these improvements in both laws and enforcement, in 1999 the U.S. Trade Representative expressed concern that Chinese penalties did not act as a deterrent and noted problems related to trademark counterfeiting.

Standards and Regulatory Measures

WTO working party members and China have made progress in negotiating issues involving China's use of standards and regulatory measures to unfairly regulate trade, but some minor differences remain. Standards and regulatory measures include rules governing how (1) imports and exports are licensed, (2) standards and technical regulations are established,⁷ (3) health and safety protection measures are set (sanitary and phytosanitary measures),⁸ and (4) base values for applying customs duties are set (customs valuation).⁹ (See table 11.) Agreement has generally been reached on most issues in this area, with additional work needed to determine how China will implement its commitments on standards and technical regulations. Also, China must still provide working party members information regarding its standards and health and safety measures, as agreed.

⁷Product standards may be voluntary, such as standards regulating the size of lead to put in a mechanical pencil or the meaning of a particular environmental symbol on a product's label; or they can be mandatory, such as nutritional labeling requirements for food or safety specification requirements. Such standards may also include specifications for the terminology, symbols, packaging, marking, or labeling of a product, process, or production method.

⁸Sanitary and phytosanitary measures are designed to protect a country's human, animal, or plant life or health. The relevant WTO agreement allows members to maintain such measures but requires that they be based on scientific principles.

⁹The WTO agreements also cover how a product's origin is determined (rules of origin) and how shipments should be inspected prior to export (preshipment inspection).

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Table 11: Status of WTO Working Party Negotiations on Standards and Regulatory Measures

Issue	Provisions in WTO agreements that apply to all members	Specific provisions for China	Status of negotiations
Import and export licensing ^a	Procedures used for licensing, including automatic and nonautomatic licensing, intended to be transparent and not restrict trade unduly; Developing countries permitted extra time to phase in some rules	Implement upon accession Increase transparency and fairness of China's licensing, including additional notification requirements	Agreement ^b
Standards and technical regulations ^c	Measures to be transparent, nondiscriminatory, and based on international standards where they exist; Developing countries allowed time to phase in some commitments	Increase transparency of existing and future measures Ensure national treatment by regulators Reform certain inspection procedures and practices	Still under negotiation
Health and safety measures ^d	Measures to be based on scientific principles and, where possible, international standards; Members to accept other members' measures as equivalent if demonstrated to be so; Members to assess the risks to human, animal, and plant life and health in setting measures; Measures to be based on regional conditions; Developing countries allowed time to phase in some rules	Implement upon accession Apply international standards where they exist Eliminate existing unfair barriers	Agreement ^b
Customs valuation ^e	Intend that members use a fair, uniform, and neutral system for valuing goods for customs purposes based on commercial practices; Set guidelines to determine the value of imports for charging appropriate customs duties; Developing countries generally allowed 5 years to implement agreement; that is, by the year 2000	Implement upon accession Amend laws to be consistent with agreement Eliminate WTO-prohibited practices, such as basing customs values on set minimum prices Resolve specific valuation issues on certain products	Agreement ^b

^aUnder the Agreement on Import Licensing Procedures.

^bAgreement in this area is subject to China and the WTO working party members reaching agreement on the final text of the protocol and working party report, which may include drafting or revising language describing China's commitments regarding individual topics.

^cUnder the Agreement on Technical Barriers to Trade.

^dUnder the Agreement on the Application of Sanitary and Phytosanitary Measures.

^eUnder the Agreement on the Implementation of article VII of the General Agreement on Tariffs and Trade.

Source: GAO analysis.

In the past, China has used a variety of standards and regulatory measures to limit imports into China, according to U.S. and private sector officials. China maintains separate regulatory agencies—one for imports and one for domestic products—that apply technical inspection standards.¹⁰ The U.S. Trade Representative has also noted that major problems have existed with how China sets standards. For example, China's standards (1) are not transparent, (2) can differ for imports and domestic products, and (3) can differ from international standards for no apparent reason. U.S. and other foreign traders often have difficulty learning which of China's product standards apply to their goods. As a WTO member, China would make certain commitments not to use product standards or regulatory measures to unfairly limit imports.

**Compliance and Protection
Mechanisms**

As a result of the November 1999 U.S.-Chinese agreement, significant progress has been made regarding compliance and protection mechanisms that would help WTO members monitor and respond to China's implementation of its WTO commitments. China agreed to a 12-year, product-specific safeguard; safeguard protection against surges in Chinese textile imports until December 31, 2008; and provisions for mitigating the unfair trade practices of dumping (selling below market value) and subsidizing exports. Nevertheless, assuming the terms of the November bilateral agreement are generally accepted by the other working party members, some minor differences remain to be resolved. Negotiations will continue over the issue of creating a mechanism to monitor China's actions during the transition period in which it implements its WTO commitments (see table 12).

¹⁰Under WTO rules, technical regulations refer to mandatory product standards, which define product characteristics and their related processes and production methods, including applicable administrative provisions.

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Table 12: Status of WTO Negotiations on Compliance and Protection in Mechanisms

Compliance mechanism	Status of WTO multilateral negotiations	Provisions in November 1999 U.S.-China bilateral agreement ^a
Product-specific safeguard	Must finalize a provision to allow WTO members to avail themselves of a safeguard process that would help regulate import levels of specific products and guard against disruption of industries from surges of Chinese imports	China agreed to a product-specific safeguard based on an easier "market disruption" rather than "serious injury" standard for a duration of 12 years following China's accession
Textile safeguard	Must finalize a provision to allow WTO members to avail themselves of a safeguard that would help regulate import levels of textiles and apparel and guard against disruption of industries from surges of Chinese textile imports that is still under negotiation	China agreed to a textile safeguard that would extend to 2009 (4 years beyond what is otherwise permitted under WTO rules) provided that the WTO member has a bilateral textile agreement with China
Alternative methodologies	Must finalize a provision to allow WTO members to avail themselves of alternative methodologies for determining Chinese prices and subsidies in antidumping and countervailing duty cases that is still under negotiation	China agreed to allow WTO members to use alternative nonmarket economy methodologies for a duration of 15 years from accession for antidumping cases (provided that the WTO member has market economy criteria in its laws at the time of China's accession) and permanently for countervailing duty cases
General safeguard	China very strongly resists this proposed provision, which would allow WTO members to suspend WTO benefits to China if China is not implementing WTO commitments	Not addressed in bilateral agreement
Transitional review mechanism	Negotiations continue about establishing a special review body to assess China's compliance with terms of accession, especially with regard to scope of review and duration	Not addressed in bilateral agreement

^aThe working party must agree to these proposed bilateral commitments and incorporate them in the protocol and/or working party report together with any modifications.

Source: GAO analysis.

China has to make many reforms to comply with WTO rules, which are designed for market-based economies. However, working party members, including the United States, recognize the evolving nature of China's economy and that China will need some time to phase in some commitments. At the same time, WTO members want to protect their interests during this transitional period. As a result, the working party has considered including special transitional mechanisms in China's accession package to help monitor China's implementation of its commitments and safeguard their interests should China fail to live up to them. Special review provisions and safeguards were included in the accession protocols of some Eastern European countries to the General Agreement on Tariffs and Trade, including those of Poland, Hungary, and Romania. WTO rules already allow members to use safeguards when subjected to or threatened

by serious injury from imports of a particular product (or directly competitive products),¹¹ however, these safeguard measures cannot target specific countries—instead, they must be applied to products irrespective of their source.

Similarly, the United States and other WTO members currently limit imports of textiles and clothing through quotas under a WTO agreement. Imports from China are also limited on a bilateral basis. In 1997, China exported \$6 billion in textile and apparel products to the United States, making it the largest exporter of such products in value terms.

Although a mechanism exists in the WTO to periodically review the trade policies of each WTO member, negotiators think the present “Trade Policy Review Mechanism”—which was designed as a broad review of members’ trade regimes—is insufficient to oversee China’s progress in implementing its accession commitments. Thus there have been proposals for creating a “transitional review mechanism” to better allow WTO members to monitor relevant changes in China.

Trade-distorting Industrial Policies

There are differences remaining between members of the WTO working party and China over China’s pursuit of policies that promote and direct economic development in certain sectors while regulating others for social and political reasons. Negotiations in this area have included China’s use of (1) subsidies, (2) state trading enterprises, (3) price controls, and (4) trade-related investment measures and other industrial policies. Negotiations between China and the WTO working party will continue, taking into account the bilateral progress made under the November 1999 U.S.–China agreement. In that agreement, China committed to implement the WTO agreement on trade-related investment measures upon accession and agreed to some provisions on investment requirements, subsidies, and state trading enterprises (see table 13).

¹¹Under the WTO Agreement on Safeguards, “serious injury” means a significant overall impairment in the position of a domestic industry; “threat of serious injury” means a serious injury that is clearly imminent.

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Table 13: Status of WTO Negotiations on China's Trade-distorting Industrial Policies

Issue	Status of WTO multilateral negotiations	Provisions in November 1999 U.S.-China bilateral agreement ^a
Subsidies	China has agreed to eliminate "prohibited" subsidies, but negotiations continue over when some will be eliminated	Not subject of bilateral agreement
	Negotiations continue over what remedies WTO members will be able to use against China's "actionable" subsidies	China's assistance to state-owned enterprises will normally be considered "specific" and <i>therefore potentially subject to countervailing duty actions under the WTO subsidy agreement</i> . WTO members maintain the right to use alternative benchmarks for identifying and measuring subsidies in countervailing duty investigations
	China will fully notify the WTO of all subsidies as defined by the WTO agreements, but most recent submission is not considered to be comprehensive	Not subject of bilateral agreement
State trading enterprises	China will abide by existing WTO rules governing the practices of state trading enterprises	Not subject of bilateral agreement
	Negotiations continue over the list of Chinese products that will be subject to state trading and when some products will be removed from the list	China will remove soybean oil from state trading by 2006 and permit private trade in some additional oils. Chemical fertilizer will be subject to state trading. ^b
	Negotiations continue over proposed commitments that Chinese state trading enterprises will refrain from certain export practices	Not subject of bilateral agreement
	Negotiations continue over commitments that Chinese state trading enterprises will refrain from certain import practices	China's state-owned and state-invested enterprises will make purchases and sales based on commercial considerations
Trade-related investment measures and other industrial policies	China has agreed to implement the WTO Agreement on Trade-related Investment Measures upon accession, which would eliminate laws, regulations, and policies requiring trade and foreign exchange balancing, local content, and export performance requirements	China agreed to implement the agreement on accession and will not enforce contracts imposing such requirements. Also, China agrees that imports or investment will not be conditioned on local content, offsets, technology transfers, or other performance requirements.
Price controls	China has agreed to generally allow prices to be determined by market forces, with negotiated exceptions listed, and to end certain discriminatory price practices	Not subject of bilateral agreement
	China has tentatively agreed to not extend price controls beyond those listed, except "in exceptional circumstances," and to make "best efforts" to remove these controls	Not subject of bilateral agreement
	Negotiations continue on the list of products and services for which China will be allowed to maintain price controls	Not subject of bilateral agreement

^aThe working party must agree to these proposed commitments and incorporate them in the protocol and/or working party report together with any modifications.

^bIn May 2000, China agreed to provide controlled access for chemical fertilizer imports through a tariff-rate quota, according to U.S. Trade Representative officials. China's commitment would allow some foreigners to privately import fertilizer themselves, but would otherwise require any foreigners who distribute or sell foreign fertilizer in China to purchase it from a Chinese state trading company.

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Fertilizer was the fourth largest U.S. export to China in 1998, accounting for \$1 billion, or 8 percent, of U.S. exports to China.

Source: GAO analysis.

Specifically, while China has agreed to eliminate certain subsidies prohibited by the WTO agreements, Chinese and working party negotiators must agree on which WTO trade remedies members can use against other types of Chinese subsidies, if they are shown to adversely impact a member. The negotiations on subsidies involve (1) how WTO members will be able to apply the WTO Agreement on Subsidies and Countervailing Measures¹² to Chinese subsidies and (2) listing specific subsidy programs. The WTO agreement on subsidies categorizes subsidy programs into three groups: (1) "prohibited" subsidies, which are used to promote exports or replace imports (import substitution); (2) "actionable" subsidies, which are not used directly for export promotion or import replacement but which, if they are shown to adversely impact another member, may be forced to be modified or removed; and (3) "nonactionable" subsidies for research and development, disadvantaged regions, and adaptation of facilities to meet new environmental standards. The WTO subsidies agreement allows some countries phaseout periods for prohibited subsidies¹³ and narrows the recourse to remedies members may take against some countries' actionable subsidies.¹⁴ Working party members also seek more information from China on its use of subsidies, both at the central and the local level.

¹²Under the WTO subsidies agreement, subsidies include direct transfers of funds, forgone government revenue (for example, taxes), government-provided goods (free of charge), any indirect provision of these benefits, or any form of income or price support.

¹³Developing countries are granted 8 years from January 1, 1995, to eliminate export performance subsidies and 5 years to eliminate import substitution policies.

¹⁴Specifically, the agreement requires a higher level of proof to take an action against a developing country's subsidies and limits the ability of members to challenge developing country subsidies that cause injury in a third country market.

Similarly, China has made commitments to abide by existing WTO rules governing government-sanctioned enterprises (state trading) and regarding its use of trade-related investment measures¹⁵ and price controls. Nevertheless, it must reach agreement with working party members over the final lists of products subject to price controls and state trading,¹⁶ as well as any other commitments regarding state trading enterprises' import or export practices. Notwithstanding these differences, in November 1999, U.S. and Chinese negotiators reached bilateral agreement on defining what constitutes subsidies for China's state-owned enterprises, on what products will be imported by China's state trading enterprises, and that various activities of state-owned and state-invested enterprises will, like state trading enterprises, be based solely on commercial considerations (without government influence.) They also agreed on when China will discontinue WTO-prohibited practices that impose trade-related conditions on foreign investments, as well as some other practices, including technology transfer requirements.

¹⁵These measures are government actions that constrain foreign investment and alter trade by designating foreign firms' export targets or by limiting their access to imports for production. Particular measures are prohibited by the WTO Agreement on Trade-related Investment Measures.

¹⁶China proposed to maintain import state trading for 8 product categories and export state trading for 18 product categories (both to be listed in an annex to the protocol). China proposed import state trading for wheat, corn, rice, vegetable oils, sugar, cotton, tobacco, chemical fertilizer, and crude and processed oil. China proposed export state trading for tea, maize, soybeans, coal, silk and unbleached silk, crude and refined oil, several kinds of cotton products, and a variety of tungsten and antimony products. In addition, China has agreed to eliminate "designated trading," which limits the right to trade in six products—rubber, timber, plywood, wool, acrylic, and steel—to about 60-100 specific "designated" companies. Restrictions on all products except steel will be eliminated after 3 years, at which point all companies would have the right to trade in these products. Restrictions on the right to trade steel products will be eliminated in 5 years.

Foreign Currency
Reserves-related
Constraints on Trade

The WTO working party and China have differences to resolve over China's potential use of WTO provisions intended to assist countries during a serious decline in their foreign currency reserves. China had foreign currency reserves in 1999 in excess of \$150 billion, which are the second largest in the world. Nevertheless, WTO members are concerned that China might someday use the provisions on balance of payments measures and foreign exchange controls to regulate its imports and provide protection for specific domestic industries. The WTO agreements contain provisions that allow countries to temporarily impose restrictions on imports or access to foreign currency when faced with a deterioration of their holdings of foreign currency reserves. These provisions are intended to allow a country facing a serious decline in its monetary reserves to reduce the demand for foreign currency and to allow reserves to accumulate.¹⁷ Restrictions on imports, known as "balance of payments measures," reduce domestic demand for foreign currency needed to purchase imports. Restrictions on access to foreign currency, known as "foreign exchange controls," directly limit the supply of foreign currency but also indirectly restrict imports since purchasers are not able to acquire foreign currency to purchase goods.

Other Issues

Differences remain on a few miscellaneous topics. For example, WTO members have asked China to consider WTO-related commitments in the areas of government procurement and civil aircraft. These topics are both covered by WTO "plurilateral" agreements, which WTO members can join if they volunteer to do so.¹⁸ Some related progress was made on procurement issues as part of the November 1999 U.S.-China bilateral agreement. Negotiators have only minor differences over the third miscellaneous topic regarding the use of certain taxes and charges.

¹⁷The 1994 General Agreement on Tariffs and Trade recognizes the International Monetary Fund as the institution entrusted with determining what constitutes a "serious decline in the contracting party's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves," for purposes of executing foreign currency reserves-related policies.

¹⁸Currently, 12 WTO members, including the 15 members of the European Union, have undertaken obligations under the Agreement on Government Procurement and 25 under the Agreement on Trade in Civil Aircraft.

WTO members would like access to China's government procurement market, which is potentially the largest in the world. China's WTO obligations granting market access and equal treatment generally do not apply to goods and services procured by government agencies (for government purposes).¹⁹ China has not offered to join the Agreement on Government Procurement, which has disciplines to make government purchasing decisions more transparent, fair, and open to foreign suppliers. China has only recently published its laws regarding its government procurement practices; seldom uses transparent and competitive bidding procedures in its procurement; and is subject to widespread official corruption, according to U.S. government reports. However, in the November 1999 agreement, U.S. and Chinese negotiators agreed that purchases by Chinese state-owned and state-invested enterprises would not be considered to be government procurement under the WTO agreements and therefore would not be exempt from WTO rules and obligations. Furthermore, as previously mentioned, the Chinese agreed to require that all state-owned enterprises and state-invested enterprises make purchases (and sales) based on specified commercial considerations and not based on the influence of the government.

WTO members have asked China to consider making commitments under the plurilateral Agreement on Trade in Civil Aircraft, which seeks to provide a comprehensive basis for free and fair trade in the aircraft sector. China is a major producer and purchaser of aircraft; in fact, aircraft represent the number one U.S. export to China. The agreement includes tariff-cutting provisions, pricing guidelines, and disciplines on the use of technology transfer requirements and other offsets on foreign aircraft suppliers and on using subsidies to support domestic producers. China has not offered to join this agreement. Nevertheless, China made commitments in the November 1999 agreement with the United States reducing tariffs and eliminating quotas on related products. Furthermore, China's general commitments broadening trading rights, limiting subsidies, and eliminating government local content and export performance requirements, as well as technology transfer and offset conditions on foreign investment (all of which will be subject to dispute settlement,) will help address concerns in this area.

¹⁹See articles II, XVI, and XVII of the General Agreement on Services, and article III of the 1994 General Agreement on Tariffs and Trade.

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Chinese and WTO working party negotiators have only minor differences to negotiate concerning a third miscellaneous topic—the taxes and charges that China imposes on imported and exported goods in addition to tariffs. China and working party members are in agreement on most commitments regulating China's use of taxes and other charges on trade, but they still have to conclude negotiations on the list of products subject to export duties. The WTO rules prohibit discriminating against certain products with taxes and charges based on their national origin. China has made commitments to conform its laws and to apply internal taxes and customs fees and charges applied by national and subnational authorities to the WTO requirements. China's commitments also include a prohibition against using export duties unless they are in conformity with WTO rules, which require them to be applied on a nondiscriminatory basis, or if they are notified in an annex. China's most recent proposal made in February 1997 has a list of 35 products primarily composed of metals and ores.

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Related GAO Products

World Trade Organization: China's Membership Status and Normal Trade Relations Issues (GAO/NSIAD-00-94, Mar. 17, 2000).

World Trade Organization: Status of China's Membership Negotiations (GAO/C-NSIAD-99-9, Sept. 30, 1999).¹

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¹This report had a national security classification of CONFIDENTIAL and is not available to the general public but is available to Members of Congress and some U.S. government officials.

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